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No. 659

In the Supreme Court of the United States

OCTOBER TERM, 1935

FRANK T. HINES, ADMINISTRATOR OF VETERANS' AFFAIRS, UNITED STATES VETERANS ADMINISTRATION, PETITIONER

v.

MINNIE STEIN, AS GUARDIAN OF THE ESTATE OF EDMUND J. STEIN, A WEAK-MINDED PERSON

ON WRIT OF CERTIORARI TO THE SUPERIOR COURT OF PITTSBURGH, STATE OF PENNSYLVANIA

PETITION FOR CERTIORARI FILED DECEMBER 27, 1935

CERTIORARI GRANTED FEBRUARY 3, 1936

BRIEF OF PETITIONER

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v.

MINNIE STEIN, AS GUARDIAN OF THE ESTATE OF EDMUND J. STEIN, A WEAK-MINDED PERSON

ON WRIT OF CERTIORARI TO THE SUPERIOR COURT OF PITTSBURGH, STATE OF PENNSYLVANIA

BRIEF OF PETITIONER

JURISDICTION, STATUTES AND REGULATIONS INVOLVED

This Court has jurisdiction under 28 U. S. C., Section 344 (b). Certiorari granted February 3, 1936. The many Statutes and the Regulations involved are listed in the Index and are printed in full, or insofar as pertinent, in the Appendix.

STATEMENT

QUESTIONS PRESENTED

The ultimate questions here involved are—(a) whether a State Court in which the guardianship of

an incompetent veteran is pending may validly direct the payment of a fee for legal services rendered at the request of the guardian in connection with said veteran's pension claim, which fee is in excess of the maximum fee prescribed by the Acts of Congress and Executive Regulations issued pursuant thereto, and (b) whether a fee for such services may be charged or paid in a mode or manner other than as prescribed by Paragraph XVII of Veterans' Regulation No. 10 and Section 114 of Title 38, U. S. Code, viz: directly by the Veterans' Administration to the attorney if and when allowed by the Veterans' Administration.

FACTS THE BASIS OF CONTROVERSY

On June 27, 1934, the guardian filed in the Court of Common Pleas, which had appointed the guardian in 1921 and in which court such proceedings were pending, an application for authority to pay Hallock C. Sherrard, Esq., an attorney at law of Pittsburgh, Pennsylvania, the sum of $100.00 "for his services and expenses and making the trip to Washington, D. C., to represent her in her claim for her said son's estate before said Board of Veterans' Appeals" (R. 2), reciting as a basis for such application that under new legislation of Congress "enacted about a year ago the compensation of $100.00 per month payable on account of the permanent and total disability of said veteran has been cut off. * * * That a hearing on this matter before the Board of Veterans' Appeals at Washington, D. C., has been set for Wednesday, March 28, 1934" (R. 2). Order as

prayed for was entered by said Court of Common Pleas on June 27, 1934 (R. 8), over the objections (R. 3) of petitioner timely filed as required by the law of Pennsylvania. Appeal was duly prosecuted from such order to the Superior Court of Pennsylvania (R. 11).

OPINION OF THE COURT BELOW

The opinion of the Superior Court of Pennsylvania filed July 18, 1935, appears at page 11 of the record and is reported in Volume 180, Atlantic Reporter, page 577. That court affirmed the order of the Common Pleas Court of Allegheny County dated June 27, 1934, appearing at page 8 of the record and which authorized the guardian of Edmund J. Stein, "a weak-minded person" to pay Hallock C. Sherrard, Esq., from the estate of said Edmund J. Stein the sum of $100.00 "for legal services and traveling expenses in appearing before the Board of Veterans' Appeals at Washington, D. C., on March 28, 1934."

Petition for leave to appeal was filed in The Supreme Court of Pennsylvania July 27, 1935 (R. 15). Rule was granted on plaintiff to show cause why appeal should not be allowed (R. 20) and on October 1, 1935, the appeal was "refused" (R. 20). Thereupon, the judgment of the Superior Court of Pennsylvania became final on October 1, 1935.

Certiorari granted February 3, 1936, (R. 22).

ERRORS ASSIGNED

The Superior Court of Pennsylvania erred in holding that:

1. The United States had no "jurisdiction or control" of pension money paid to a guardian of an incompetent veteran in respect to disbursements sought to be made by such guardian for attorneys' fees exceeding in amount fees permitted under the applicable Federal Statutes and Executive Regulations pursuant thereto.

2. The court in which the guardianship proceedings were pending had "ultimate and exclusive power" over the fixing and allowing of such fees from pension funds in the hands of the guardian of an incompetent veteran, contrary to the provisions of the Federal Statutes and Executive Regulations issued pursuant thereto.

3. The question here presented is determinable by inquiry as to the passing of title to the funds and a determination that title thereto had passed from the United States to the guardian or the ward.

4. There is no Federal law or Regulation applicable to this case.

SUMMARY OF ARGUMENT

1. The United States has the power to limit fees payable to attorneys for legal services rendered in behalf of veterans in connection with their claims for pension or other benefits due or alleged to be due from the United States.

2. The United States Statutes and Regulations are applicable to this case, and are binding upon the State Court, Article VI, Constitution.

3. The fee allowed by the Superior Court was illegal for (a) it was contrary to the Statutes as to

amount, and (b) it was contrary to the Statutes and the Regulations (Executive Orders) as to method of allowance and payment.

ARGUMENT

1. The United States has the power to limit fees payable to attorneys for legal services rendered in behalf of veterans in connection with their claims for pension or other benefits due or alleged to be due from the United States.

The record, by implication, shows (R. 1–2) and the courts so assumed (R. 7 and R. 13) that the fee, if allowed, would be paid out of the estate of the veteran comprised solely of payments of compensation and insurance, which payments had been made by the Veterans' Administration. While, as will be pointed out more particularly below, the illegality of the fee is not wholly determinable by the funds from which it is paid, it is believed appropriate at the very outset to examine the soundness of the decision of the Superior Court that the Federal Government could not limit the fees to be paid out of such estate.

To present this case properly it is believed that a short review of the history of pension legislation and the control of fees to be charged by pension agents or attorneys is desirable. From the date of its organization the United States Government under its authority to raise armies and wage war has cared for those who made up its armed forces in time of war and their dependents. It developed a complete

and comprehensive system of gratuities called pensions for that purpose. It provided for the protection of pension funds until they reached the pensioners. It prohibited the assignment of pensions, of levy on such funds by creditors, exempted them under certain conditions from taxation, provided penalties for embezzlement of such funds by guardians, and limited fees which agents or attorneys might lawfully charge for prosecuting claims for pensions. The constitutional authority of the United States so to do has been sustained in each instance.

In connection with the pension system it was provided by the Act of July 4, 1884, 23 Stat. 101, Section 493, Title 5 U. S. C., that the Secretary of the Interior might provide rules and regulations governing agents or attorneys prosecuting claims before that Department. This Act also prohibited an agent or attorney from demanding or receiving any fee other than that the Commissioner of Pensions should direct to be paid him out of the pension allowed, if any, and not exceeding $25.00, 23 Stat. 99; Section 111, Title 38, U. S. C., provided certain fees to be allowed by the Commissioner of Pensions (23 Stat. 99; Section 114, Title 38, U. S. C.), and provided further that:

> Any agent or attorney or other person instrumental in prosecuting any claim for pension or bounty land, who shall directly or indirectly contract for, demand or receive or retain any greater compensation for his services or instrumentality in prosecuting a claim for pension or bounty land than is

> herein provided, or for payment thereof at any other time or in any other manner than is herein provided, or who shall wrongfully withhold from a pensioner or claimant the whole or any part of the pension or claim allowed and due such pensioner or claimant, or the land warrant issued to any such claimant, shall be deemed guilty of a misdemeanor, * * *.

The constitutionality of these, and similar, acts was sustained by the Courts in the cases of *Phillips* v. *Ballinger*, 37 App. D. C. 46, and *Calhoun* v. *Massie*, 253 U. S. 170, discussed below.

(The material portions of the applicable Statutes will be found printed in full in the Appendix hereof.)

In 1917, during the World War, Congress provided for a new system of gratuities and insurance for the members of the armed forces of the United States and their dependents. The gratuities were designated as compensation. (Act of October 6, 1917, 40 Stat. 398, Section 13, War Risk Insurance Act, and the Act of June 7, 1924, as amended March 4, 1925, 43 Stat. 1311, Section 500, World War Veterans' Act, 38 U. S. C. 551.) Under this system which differed from the Pension system in that it did not permit agents or attorneys to present claims before the Bureau—with exceptions not here material—fees which attorneys might contract for, demand, or receive for preparing papers or for prosecuting any claims for benefits under said acts where the Government consented to be sued in connection with such

claim, were limited. These limitations were sustained by this Court in the case of *Margolin* v. *United States*, 269 U. S. 93, and *Frisbie* v. *United States*, 157 U. S. 160, discussed below.

By an Executive Order of the President of the United States, made pursuant to the Act of July 3, 1930 (46 Stat. 1016; Section 11, Title 38, U. S. C.), the Bureau of Pensions and the United States Veterans' Bureau were consolidated into a new agency of the Government known as the Veterans' Administration, the head of which was designated the Administrator of Veterans' Affairs (Section 2, Act of July 3, 1930, 46 Stat. 1016; Section 11a, Title 38, U. S. C.), who was and is charged with all the duties relating to the Bureau of Pensions formerly imposed on the Secretary of the Interior and the Commissioner of Pensions. Such Administrator also is vested with the powers and exercises the functions of the former Director of the Veterans' Bureau.

These two systems of gratuities or pensions continued until enactment of the Act of March 20, 1933 (Public No. 2, 73d Congress, 48 Stat. 8; Sections 701 to 721, Title 38 U. S. C.). By that Act all public laws granting compensation, pension, disability allowance, and other benefits were repealed (with certain exceptions not here material). A new system was initiated in which all gratuities were designated as pensions. The administrative functioning of the Veterans' Administration continued substantially as before.

Section 493, Title 5 U. S. C., 23 Stat. 101, and Sections 111, 114 and 115, Title 38 U. S. C., 23 Stat. 99 and 101, were not a part of any law, "granting pension" and hence were not repealed. On the contrary they were specifically continued in effect by Section 7 of Title 1 of the Act of March 20, 1933 (48 Stat. 9; Section 707, Title 38 U. S. C.), which provided that the Administrator of Veterans' Affairs should have the authority and power granted by certain enumerated sections, and "such other sections of Title 38 U. S. C., as relate to the administration of laws granting pensions."

To carry into effect the provisions of Public No. 2, 73d Congress, and pursuant to the authority contained therein, the President issued an Executive Order, Veterans' Regulation No. 10, Paragraph XVII of which provides:

> The Administrator of Veterans' Affairs is hereby authorized, under such rules as he may prescribe, to recognize agents, attorneys, or other persons in the presentation of claims. * * * The Administrator of Veterans' Affairs is further authorized to determine and pay fees in pension claims to such persons, agents, and attorneys, and to prescribe rules governing entitlement to and the amount and mode of payment of such fees in accordance with Sections 111, 114 and 115, Title 38, U. S. C. (The entire paragraph is quoted on page 25).

Acting under said Executive Order and the laws above mentioned the Administrator of Veterans' Af-

fairs issued Instruction No. 3–A, Veterans' Regulation No. 10, Sections C and D of which prescribe the conditions under which fees and expenses may be allowed and paid in accordance with said Statutes (Instruction No. 3–A, Veterans' Regulation No. 10, is printed in full at page 53 hereof). This was a revision of the Pension Bureau Regulations on the same subject based upon the same Statutes.

It is believed there is no serious doubt that the Congress has the power to enact such legislation applicable to all pensioners, sane and insane. It has exercised for many years without any distinction being drawn as between competent and incompetent claimants for pension benefits. It would seem no sound basis exists for any distinction between competent and incompetent claimants in this respect. If the United States can protect pension funds until they reach the beneficiary even to the extent of limiting attorney fees which may be contracted for or paid in the cases of competent veterans, as it undoubtedly can under the principles announced by this Court in the case of *Frisbie* v. *United States*, 269 U. S. 93, it seems necessarily to follow that it could do so in the cases of incompetents who are unable to protect themselves. This seems clear from the decisions of this Court in the case of *United States* v. *Hall*, 98 U. S. 343, and *Spicer* v. *Smith*, 288 U. S. 430.

In the Hall case the guardian was indicted and convicted of embezzling pension money paid to him for the benefit of his ward. For the defendant it was insisted that when payment of pension money

was made to the guardian, the fund ceased to be within the constitutional control of the United States and that the Federal Statute penalizing a guardian embezzling such fund was unconstitutional and void. After stating this argument the opinion proceeds (at page 359):

> * * * But the court is unhesitatingly of a different opinion, for several reasons: 1. Because the United States, as the donors of the pensions, may through the Legislative Department of the Government, annex such conditions to the donation as they see fit, to insure its transmission unimpaired to the beneficiary. 2. Because the guardian no more than the agent or attorney of the pensioner is obliged by the laws of Congress to receive the fund; but if he does, he must accept it subject to the annexed conditions. 3. Because the word "guardian", as used in the Act of Congress, is merely the designation of the person to whom the money granted may be paid for the use and benefit of the pensioners. 4. Because the fund proceeds from the United States, and inasmuch as the donation is a voluntary gift, the Congress may pass laws for its protection, certainly until it passes into the hands of the beneficiary, which is all that is necessary to decide in this case. 5. Because the elements of the offense defined by the Act of Congress in question consist of the wrongful acts of the individual named in the indictment, wholly irrespective of the duties devolved upon him by the state law. 6. Because the theory of the defendant that the Act of Congress aug-

> ments, lessens, or makes any change in respect to the duties of a guardian under the state law is entirely erroneous, as the Act of Congress merely provides that the pension may be paid to the person designated as guardian, for the use and benefit of the pensioner, and that the person who receives the pension, if he embezzles it or fraudulently converts it to his own use, shall be guilty of a misdemeanor, and be punished as therein provided.

In its opinion in the case of *Spicer* v. *Smith*, 288 U. S. 430, this Court, while holding that the United States has no proprietary interest in pension (compensation) after payment to a guardian of an incompetent veteran of the World War, used the following significant language (pages 434–5):

> The provisions for exemption, nonassignability, and suspension of payments plainly imply the passage of title from the United States to the veteran. The denunciation of embezzlement by guardians is not inconsistent with that intention. These regulations, like many to be found in pension laws, disclose a purpose to safeguard to beneficiaries the appropriations and payments made for their benefit (*United States* v. *Hall*, 98 U. S. 343, 353. *Westfall* v. *United States*, 274 U. S. 256) and evince special solicitude for the protection of veterans who by reason of mental incompetency are unable to protect themselves. * * *
>
> Petitioner cites *United States* v. *Hall*, supra. The question there was whether Congress has power to prescribe punishment for the embezzlement by guardians of pension money

paid them in behalf of their wards. The indictment showed that the money alleged to have been embezzled was the property of the accused guardian's ward. The court held that to insure transmission unimpaired to the beneficiary the United States might annex such conditions to the donation as it deemed appropriate and that the guardian was bound to accept the payment subject to the terms of the grant and that Congress had power to protect its gift until it passed into the hands of the beneficiary.

In the case of *Frisbie* v. *United States*, 157 U. S. 160, this court held that the Congress had authority to grant or to withhold pensions, to determine and fix conditions under which applications therefor shall be prosecuted and to prescribe the conditions under which others may assist in procuring pensions. Conviction for violating such restrictive provisions was affirmed. Likewise, in the case of *Margolin* v. *United States*, 269 U. S. 93, this court held that the Act approved May 20, 1918, 40 Stat. 555 limiting the fees of attorneys in the preparation of papers in connection with claims before the Bureau of War Risk Insurance (now Section 500, World War Veterans' Act, as amended March 4, 1925, 43 Stat. 1311) was constitutional and that the only compensation permitted agents or attorneys for services of this character was such as provided therein, and none other. Conviction in this case was also affirmed.

The constitutionality of the statute, 23 Stat. 98, 99, and 101, referred to above was upheld by the

Court of Appeals of the District of Columbia in *Phillips* v. *Ballinger* (37 App. D. C. 46), the Court saying:

> The right to appear before the Interior Department is not an inherent right, but a privilege granted by law and subject to such limitations and conditions as are necessary for the protection both of the Department and the Public.

(The case involved the question whether the provisions of the Statute concerning disbarment violated the "due process clause." Held, it does not.)

The limitations were imposed by Congress under the power to declare war and provide for the national defense. That such legislation is within its power, this Court has determined in the cases already cited. Further, attention is also invited to the case of *Calhoun* v. *Massie*, 253 U. S. 170, wherein it was held that Congress had the authority to control the conditions under which claims against the Government might be prosecuted, and to protect claimants from improvident bargains and the Treasury against the possibility of frauds or impositions. In that case the contract was made before passage of the act limiting the fee. It was nevertheless held that the Act does not contravene the United States Constitution (Fifth Amendment). The plaintiff had contracted with defendant for a fee of 50% of claim. Congress in authorizing payment of the claim limited the fee to 20%. The court said (at page 173):

> For nearly three-quarters of a century Congress has undertaken to control in some

> measure the conditions under which claims against the Government may be prosecuted. Its purpose has been in part to protect just claimants from extortion or improvident bargains, and in part to protect the Treasury from frauds and imposition. See *United States* v. *Van Leuven*, 62 Fed. 52, 56. * * * Congress has manifested its belief that the causes which gave rise to laws against champerty and maintenance are persistent. By the enactment, from time to time of laws prohibiting the assignment of claims, and placing limitations upon the fees properly chargeable for services, Congress has sought both to prevent the stirring up of unjust claims against the Government and to reduce the temptation to adopt improper methods of prosecution which contracts for large fees, contingent upon success, have sometimes been supposed to encourage. The constitutionality of such legislation, although resembling in its nature the exercise of the police power, has long been settled (*Marshall* v. *Baltimore & O. R. Co.*, 16 How. 314, 336, 14 L. Ed. 953, 962; *United States* v. *Hall*, 98 U. S. 343, 354, 25 L. Ed. 180, 183, 185; *Ball* v. *Halsell*, 161 U. S. 72, 82, 84, 40 L. Ed. 622, 625, 626, 16 Sup. Ct. Rep. 554.

The contention was urged, as in the instant case, that the prohibition did not extend to payment out of funds other than those derived from the claim. On this point the Court said:

> * * * It is urged that the act here in question should be construed as limiting only the proportion of the specific funds received

> from the government which may be applied to payment of attorneys' fees; but the second paragraph of the law leaves no room for construction. It provides that "it shall be unlawful for any attorney * * * to receive any sum which in the aggregate exceeds twenty per centum" of the claim * * *.

So far as the Superior Court's opinion is based upon the view that the Government's power, or, the operation of the Federal Statute, ceased when the pensioner or his guardian received the money, a complete answer to that position will be found in the opinion of this Court in the case of *United States* v. *Hall*, supra, wherein this Court held that Congress had the power to protect the fund in question against unauthorized conversion to the use of another "and to secure its safe and unimpaired transmission to the beneficiary" and had exercised such power. This was not modified, but was confirmed by the recent decision of *Spicer* v. *Smith*, supra. In principle, those decisions, control the present case.

It has been determined by this Court in the cases heretofore cited that the United States has the power and authority to limit fees which beneficiaries may pay to their attorneys, and which attorneys or agents may demand, charge, or collect, and to provide punishment for the violation of such restrictive statutes. It has also been determined that the United States may constitutionally protect the fund in question at least until it reaches the hand of the beneficiary, by prescribing penalties for embezzlement and mis-

appropriation of such funds by a guardian. *U. S.* v. *Hall*, 98 U. S. 343. It seems clear that such protection must exist as to that class of claimants who need it more than any others, to wit, incompetent and minor claimants. There does not appear to be any sound reason why the power of the United States to place a limitation or prohibition upon a fee to be charged in pension cases should be held to apply only to competent persons. If there be any reason for a distinction, the converse would seem more logical. In fact, the reasons in support of the existence and exercise of the power apply with equal force to competent and incompetent claimants.

On this point the language used by the Court in the case of *In Re Shinberg*, 263 N. Y. S. 354, is persuasive. In this case the attorney, upon the solicitation of the committee of the insane veteran, filed a suit in the Federal District Court on a contract of War Risk Insurance, which suit was for lack of jurisdiction dismissed. Thereupon the claim was allowed and paid and the attorney, joined by the committee, petitioned the Supreme Court, New York County, for a fee amounting to 10% of the insurance so paid; which application was allowed over the objection of the Administrator of Veterans' Affairs. The objection, as in the instant case, was on the ground that the fee was illegal because contrary to Federal Statute. The court, Appellate Division, in reversing the judgment, said (at page 358):

> * * * the necessity for such a statute (referring to Section 500, World War Veterans'

> Act) must be apparent, especially in view of the great need of protection for people who really are wards of the court and who in the absence of such statutory provisions would, in many cases, be preyed upon by the unscrupulous. Because it safeguards and protects the unfortunates who are wholly dependent upon the Government for support, this statute should be rigidly enforced.

There is some intimation in the opinion of the Superior Court that the question involved may be determined on another ground (R. 13), namely, that the matter was solely within the authority of the Common Pleas Court of Allegheny County and that the Administrator had no authority to object to the allowance of the fee. *The question whether the Veterans' Administration should have objected to payment of the fee has absolutely no bearing on the legality thereof.* In filing an objection in the State Court the Chief Attorney of the Veterans' Administration was merely discharging the duty placed upon the Administrator by the Federal law, viz, Section 21, World War Veterans' Act, 38 U. S. C. 450, to the following effect:

> whenever it appears that any guardian * * * is attempting to collect fees * * * in excess of those allowed by law for the duties performed or expenses incurred, * * * the director (Administrator) is hereby empowered by his duly authorized attorney to appear in the court * * * and make proper presentation of such matters to the court.

It is immaterial whether the illegality complained of arises out of a Federal or State statute, rule, or regulation. In the case of *In Re Shinberg, supra,* the Administrator by his duly authorized attorney objected to the fee on the ground that it was contrary to Federal Statutes; and appealed from a judgment of the lower court allowing such fee. The issue was, in principle, exactly as in the instant case. In reversing the judgment the Appellate Court said (page 358):

> This court will not affirmatively join in a violation of the rules governing attorneys' fees in such Federal matters as the war risk insurance. The amount involved in the assignment does exceed the allowance permitted by the Federal rule. * * * The claim in the sum of $1,500 is disallowed.

In accord with the New York case are the Mississippi cases of *Hines* v. *Minor,* 145 So. 507, and *Hines* v. *McCoy,* 159 So. 306, and in the case of *Hines* v. *Paregol,* 77 Fed. (2d) 953, the Court of Appeals for the District of Columbia, in reversing a judgment for attorney fees allowed by the Supreme Court of the District, after quoting Section 21, said (at page 954):

> In our opinion, under these statutory provisions, the appellant was entitled, and in duty bound, to appear in this case in the lower court and represent the interests of the ward, for otherwise the ward would have been without counsel when sued by his guardian. It follows that appellant (the Administrator of Veterans' Affairs) was entitled to prosecute

> the present appeal and to appear in this court either as Administrator of Veterans' Affairs, or as next friend of the ward. *Automobile Brokerage Corporation* v. *United States*, 59 App. D. C. 243, 39 F. (2d) 288.

To the same effect where the illegality of the fee arose under State Statute, see *Hines* v. *Clark*, 191 N. E. 870 (252 N. Y. S. 777).

In the case of *Hines* v. *Hook*, 89 S. W. (2nd) 52, the court said, at page 55:

> In the Bole Case the court merely quoted the above excerpt from the Glenn Case as decisive of the question. We do not understand that the right of appeal from one State Court to another may be determined by an act of Congress; hence, if appellant has that right, it must be derived from the Missouri Statute law. Does the fact that the national government has created the estate which is in the nature of a trust fund (38 U. S. C. A., S. 422 and 450), has designated the administrator as the proper officer to see that the purpose of the trust is carried out (38 U. S. C. A., S. 425, 426), has charged him with that duty, and has authorized him to go into the state courts for that purpose (38 U. S. C. A., S. 450), coupled with the act of the Missouri Legislature (Section 606, supra) which recognizes appellant's interest by authorizing him to enter his appearance in proceedings in the probate court relating to such estates, vest him with the pecuniary interest necessary under our statute to authorize this appeal?

Answering this question the Court, after citing and quoting from the decision in *U. S. Veterans' Bureau* v. *Thomas*, 159 S. E. 159, said (page 56):

> We are of the opinion that appellant had sufficient interest to prosecute the appeal.

It will thus appear that the instant case should not have been decided on the alternative ground stated (R. 13). In objecting, the Administration was simply carrying out the intent of the Federal law. It is obvious that the right to appear in a state court, as a party to an action therein, is derived from State Law, Statute, or common law. The law of Pennsylvania, Section 788, Title 20, Purdon's Pennsylvania Statutes (printed at page 68 hereof) authorized the Veterans' Administration to appear in this case, and is in accord with the intent of the Federal Statute respecting supervision of guardians of Administration beneficiaries. See *In Re Siglin*, 161 Atl. 530.

It is clear from the authorities cited that the Congress has authority to limit the fee that may be charged for presenting claims on behalf of veterans in connection with pension or other benefits; and that it has done so with respect to all benefits payable to or on account of veterans, whether pension, compensation, or insurance, and with respect to all veterans, sane or insane.

2. The United States Statutes and Regulations are applicable to this case, and are binding upon the State Court, Article VI, Constitution.

The Superior Court (R. 12–13) questioned whether the services rendered in this case, whereon the de-

manded fee was based, fell within the Regulation (Veterans' Regulation No. 10) but held that if they did the Regulations and the Statutes would not be binding upon the State Court for the reason that they would not apply to the money after it had been paid by the Veterans' Administration to the guardian of the veteran, citing in support thereof *McIntosh* v. *Aubrey*, 188 U. S. 122; *State ex rel. etc.* v. *Commissioners* 294 Pac. 915; and *Spicer* v. *Smith*, 288 U. S. 430 (R. 12–14). The court concluded (R. 14):

> After giving this case careful consideration, we have come to the conclusion that when the money was given to the guardian, appointed by the court, it lost the impress of Government money, and the control of the estate is wholly within the province of the common pleas court.

These three cases, as well as the later case of *Trotter* v. *Tennessee*, 290 U. S. 354, were concerned with the question of exemption from the claims of creditors and from taxation. The first was a case arising under Section 4747, Revised Statutes, 17 Stat. 576, 38 U. S. C. 54, wherein it was claimed the exemption provided by such statute prevented the sale on execution of real estate purchased by the pensioner, who was sui juris, out of pension funds. This court held that the words "* * * due or to become due * * *" indicated an intent to protect the pension only while in the course of transmission to the pensioner; and that when paid to the pensioner it had "* * * inured wholly to his benefit."

The second case, *State of Kansas ex rel etc.*, v. *Commissioners, supra*, which concerned a claimed

exemption from taxation by virtue of Section 22, World War Veterans' Act, 38 U. S. C. 454, need not be considered since it reached the correct conclusion upon an erroneous basis as is clear by comparison with the case of *Trotter* v. *Tennessee*, *supra*.

The decision in *Spicer* v. *Smith*, 288 U. S. 430, upon which the Superior Court relies, while involving implicitly the same Section 22, World War Veterans' Act, held merely that when a benefit is paid the guardian of a veteran title thereto passes to the beneficiary and the money is no longer "public funds" belonging to the United States. As pointed out herein before, however, this court went on to point out the safeguards thrown around the funds in the hands of a guardian, by the Federal Statutes, and referred specially to the prior case of *United States* v. *Hall*, 98 U. S. 343, wherein this court held that the Congress has authority to protect the funds in the hands of a guardian and unexpended for the benefit of the pensioner ward. Further, in the case of *Trotter* v. *Tennessee*, 290 U. S. 354, this court explicitly refrained from passing upon the point whether the exemption from taxation provision of Section 22, World War Veterans' Act, applies to payments in the form of money while in the hands of a guardian. On this question the Supreme Court of Iowa, in *Manning* v. *Spry*, 96 N. W. 873, held that, by virtue of Section 4747 Revised Statutes, supra, such funds in the hands of a guardian were exempt. And, as pointed out under 1 above, the Congress has exercised the authority which it has under the Con-

stitution to protect the funds in the hands of a guardian of a veteran.

From the above, it is clear that the passage of title to the funds in question is not determinative of this case. Further, as was stated in the beginning, the source or nature of the funds is not wholly determinative of the illegality of the fee. It will be shown below that not only is this true, but that the ownership of the funds has no bearing on this question; but before this becomes of moment it is necessary to inquire whether the court was correct in holding that the services in this case do not fall within the Federal Statutes and Regulations. The Superior Court, as pointed out above, did not decide this point (except by implication (R. 12)), but referred (R. 12) to the opinion of the court below which said (R. 6):

> In the first place, Mr. Sherrard, in representing the guardian at the Washington hearing, was presenting neither an original claim nor a claim for increase. The original claim of the soldier had long since been presented and determined. Moreover, at the time of the hearing in March 1934, all awards of compensation to Stein had been set aside and hence the guardian's claim was not for increase of an existing allowance. What the guardian, through Mr. Sherrard, was claiming was that the previous award should be reinstated. The language of Regulation No. 10 cannot reasonably be held to apply to a claim of such character. Indeed, the language of the Presidential Order would indicate that the fees which the Veterans' Administrator was

> authorized to determine and pay were to be payable from awards which the attorney had aided in procuring. In the present case it is not proposed to pay Mr. Sherrard from any monies which may hereafter be awarded to the incompetent. We can find no statute or regulation fixing the fee to be charged for services in connection with reinstatement of an original award. Even the statute (38 U. S. C. A. 551) which limits to $10 an attorney's fee in a pension case by its terms applies only to fees "for such assistance as may be required in the preparation and execution of necessary papers in any application to the Bureau." This statute is inapplicable since the present is not a case of assisting in the preparation or execution of claim papers.

It is believed that the fee does not fall within the limitations of Section 500, World War Veterans' Act, 38 U. S. C. 551. However, if the claim, as insisted by the court, was not one for pension but was for compensation, or rather reinstatement of compensation previously allowed under the World War Veterans' Act, and claimed under the Pension Act, Public No. 2, 73d Congress, as amended, then the services rendered were illegal and no charge whatever could be made therefor—except $10 for preparation of papers in a claim under said act, and fees allowed by a Federal Court in a suit on insurance. In other words, the Veterans' Administration could not recognize an attorney, as such, in a claim for compensation under the World War Veterans' Act. Mr. Sherrard did appear, thus evidencing the fact

that necessarily the claim asserted was under the later Act (Public No. 2), which permitted such appearance before the Board in the Veterans' Administration. Said Act (43 Stat. 1311) provides:

> * * * no claim agent or attorney * * * shall be recognized in the presentation or adjudication of claims under * * * the World War Veterans' Act, * * * and payment to any attorney or agent for such assistance as may be required in the preparation and execution of the necessary papers in any application to the bureau (Administration) shall not exceed $10 in any one case. * * * Any person who shall, directly or indirectly, solicit, contract for, charge, or receive any fee or compensation, except as herein provided, shall be guilty of a misdemeanor * * *.

Surely no court, State or otherwise, would aid or abet one in violating the plain provisions of the Act. *In Re Shinberg, supra.* In a proper case, however, a court of probate could allow a fee of $10 within the terms of the act, for there is no *method of payment prescribed*, as in the Pension Acts. Nor can respondent escape this difficulty on the ground that Section 500 is repealed by said Public No. 2, for said section, being one not granting benefits was not repealed by Section 17, Public No. 2, *Conlon* v. *Adamski*, 77 Fed. (2d) 397, and *Lucas* v. *United States*, 80 Fed. (2d) 372. The former case holds illegal a fee contrary to the provisions of Section 500, the latter sustains a conviction for charging and receiving a fee in excess thereof.

There is a further reason why this case does not fall under Section 500, World War Veterans' Act. At the time the services were rendered, that is on the forenoon of March 28, 1934, the only Act whereunder the claimant had any rights whatever was Public No. 2, 73d Congress, as amended by Public No. 78, 73d Congress, and claims under that Act were for pensions (Section 1) since the veteran's case did not fall within the saving provisions of Section 17 thereof, or of the amendment. It is true, but of no significance to the issues in this case, that on that same day, March 28, 1934, the Congress, by enactment of Public No. 141, 73d Congress, restored this veteran to a pensionable status.

The claim being one for a pension, it is immaterial—except only as to the *amount* of the fee that might be allowed under the Pension Fee Acts—whether it was an original claim or a claim for an increased pension. The only right the attorney had to present the claim—whatever it's nature may have been—was derived from the Pension Fee Statutes and the Regulations. In *Phillips* v. *Ballinger*, 37 App. D. C. 46, *supra*, the court held that:

> The right to appear before the Interior Department is not an inherent right, but a privilege granted by law and subject to such limitations and conditions as are necessary for the protection both of the Department and the public. * * *

The attorney had no right to render the services—i. e., appear before the Board of Veterans' Appeals

as an attorney—under any other law or regulation (was prohibited therefrom by the former World War Veterans' Act) and did in fact qualify as an attorney and appear as such under the provisions of the Pension Fee Statutes (Sections 111 to 116, Title 38, U. S. C.), the Regulation (Veterans' Regulation No. 10) and the Instruction No. 3–A, supra. The fee payable, if any, is prescribed by the Statute, 38 U. S. C. 111–116, as is the *method of payment*—i. e., out of the pension, if any, awarded. The Executive Order issued by the President, Veterans' Regulation No. 10, Paragraph XVII merely authorized the Administrator to prescribe the rules with respect to practice of attorneys before the Veterans' Administration and with respect to the payment of fees therefor, in so far as his authority extended under Section 7, Public No. 2, 73d Congress; and the rules adopted, Instruction No. 3–A, were a revision and continuance of the rules of practice in effect in the Pension Bureau—adopted under authority of the same statutes—prior to its consolidation with the Veterans' Administration, as related under 1 of this brief.

The instant case therefore narrows down to that of a pension attorney, admitted to practice before the Veterans' Administration under the Pension Statutes and the regulations and rules promulgated pursuant thereto, who, in complete defiance of such laws and regulations, contracts with a claimant's guardian to charge, and does charge, a fee for services rendered thereunder, which fee is in violation thereof both as to amount and method of payment;

which contract is upheld by the Superior Court on the ground that the law and regulations are not applicable, or if applicable they are not binding on the State Courts. That the laws and regulations are applicable to this case has been clearly shown, and it is not thought that any lengthy consideration is necessary to demonstrate that they are binding on the Superior Court. It has been shown that the laws in question are valid under the Constitution (Argument 1 hereof) and Article VI of the Constitution makes such laws the "supreme law of the land and the judges in every State shall be bound thereby anything in the Constitution or laws of any State to the contrary notwithstanding." (See the cases cited under 1 and 3 hereof.)

3. The fee allowed by the Superior Court was illegal for (a) it was contrary to the statutes as to amount, and (b) it was contrary to the Statutes and the Regulations (Executive Orders) as to method of allowance and payment.

The amount of the fee is prescribed by 38 U. S. C. 114, 23 Stat. 99:

> * * * In all cases where application is made for pension, and no agreement is filed with the commissioner as herein provided, the fee shall be $10 and no more. And such articles of agreement as may be filed with the Commissioner of Pensions are not authorized, nor will they be recognized except in claims for original pensions, claims for increase of pension on account of a new disability, in claims for restoration where a pensioner's

> name has been or may hereafter be dropped from the pension rolls on testimony taken by a special examiner, showing that the disability or cause of death, on account of which the pension was allowed, did not originate in the line of duty, * * *.

And by Instruction 3–A, Section D, under Veterans' Regulation No. 10, the fee could not exceed $10, although the Pension Attorney under Instruction 3–A, Section C–12, could have claimed expenses. Under the same law and regulations, the claim for the fee and expenses must be presented to the Veterans' Administration, and the fee, if any allowed by the Administration, is payable out of the pension payments allowed. The expenses after approval by the Chief Attorney or the Solicitor (C–12, Instruction No. 3–A) may be paid by the claimant.

Any fee charged otherwise is illegal. Said Section 114 provides:

> * * * Any agent or attorney or other person instrumental in prosecuting any claim for pension, who shall directly or indirectly contract for, demand or receive or retain any greater compensation for his services or instrumentality in prosecuting a claim for pension than is herein provided, or for payment thereof at any other time or in any other manner than is herein provided, or who shall wrongfully withhold from a pensioner or claimant the whole or any part of the pension or claim allowed and due such pensioner or claimant, or any agent, attorney, or other person instrumental in prosecuting any claim for

> increase of pension on account of the increase of disability for which pension was allowed, who shall directly or indirectly contract for, demand, receive, or retain any compensation for such services, except as hereinbefore provided, shall be deemed guilty of a misdemeanor, * * *

Furthermore, any contract for a fee made by an attorney with a claimant may be rejected by the Administrator, as successor to the Commissioner of Pensions, 38 U. S. C. 115; and no fee whatsoever may be charged in connection with an application for arrears of pension, 38 U. S. C. 116. It is clear that no fee in excess of $10.00 could be allowed in any event, that the determination of a fee *vel non* is for the Administrator, and that a fee in violation of the statute is illegal because prohibited.

An exhaustive search reveals no cases or authorities to the contrary. On the other hand, in addition to the cases cited under points 1 and 2 hereof the following authorities are directly in point and sustain our position on the points discussed.

The Circuit Court of Appeals for the Sixth Circuit in the case of *Welty* v. *United States*, 2 Fed. (2d) 562 (which was a criminal prosecution for the charging of a fee in excess of that allowed by law (Section 13, World War Veterans' Act), and in which the defense was that the fee was paid by one who was the guardian of the veteran from his own (the guardian's) funds)—observed at page 564

> if, as the Government contends, * * * these proceedings were more or less of a

> subterfuge intended to hide the actual transaction, and if the actual agreement, though made with the father, was made by him on behalf of his son, and was that the defendant should receive one-third of the amount allowed by the Government to the son—then the verdict would be just.

In other words the prohibition or limitation is on the charging of a fee, not on the funds out of which it may be paid.

In the case of *United States* v. *Moyers*, 15 Fed. 411, the court instructed the jury:

> After the pensioner receives his money it is his own, and he may do with it what he pleases, except to pay his agent or attorney any greater sum than ten dollars ($10) directly or indirectly.

Not only have the courts of the United States spoken with regard to the question here presented, but the courts of the several states have uniformly sustained this legislation. In the case of *Hall v. Kimmer*, 61 Mich. 269, it was held that the veteran might recover from his attorney $150 already paid for services in prosecuting a claim because the transaction was "absolutely forbidden by statute" and "illegal." The court in *Smart* v. *White*, 37 Me. 333, in discussing a contract for fees in a case of this character, held that if there was such a contract it was "illegal and void." The Court of Appeals of Kentucky in *Christie* v. *Steger's Admr.*, 21 Ky. L. Rep. 1799, in declining to enforce a contract for fees in prosecuting a claim for pension, held that it "was in violation of Federal

Statute" which was intended not only to protect the pensioner but the Government as well, and that a "palpable violation of said statute should not be treated with indifferences, nor a violation thereof encouraged or upheld by the courts."

The courts of the various states have uniformly applied the provisions of the Federal Statutes and Regulations limiting fees to cases in which the beneficiaries are not sui juris and are under guardianship and in which their estates are, of course, being administered by the State Courts. In addition to the Shinberg case, supra, attention is invited to the following cases:

In the case of *In Re Roy C. Minor*, 145 So. 507, wherein objections were filed by the Administrator of Veterans' Affairs—as in the instant case—the Supreme Court of Mississippi sustained the Chancery Court in denying the guardian's petition for authority to pay his attorney a fee greater than that allowed by law (Section 500, World War Veterans' Act, supra) for presenting a claim for war risk term insurance, and held that the estate of the ward could not lawfully be charged any greater fee than authorized by the United States Statute. In the case of *Hines* v. *McCoy*, 159 So. 306, likewise a case wherein objections were filed by the Administrator, the same court said (page 307):

> The main argument in justification of the allowance of the $1,300.00 fee, and the Chancellor's act in sustaining the demurrer to the petition of Hines, the Administrator of Vet-

erans' Affairs, is that the chancery court is not controlled by the Federal authorities in the administration of estates, after the money has passed into the hands of the guardian, and that the Federal Administrator has no standing to intervene and question any act done in the administration, because he has no such interest as would warrant his intervening, and that it would be a meddling by Bureaus of the Federal Government to allow a Federal Administrator to control the State Courts.

We do not think this contention can be maintained. There is no effort, as we understand the proceeding here, for the Federal Government to undertake to control the state court, but the Government seeks to see that the money allowed to War Veterans through insurance is properly and economically administered. The Federal Government has the right to provide, as a condition of the policies and the allowances, as it has provided, that not more than a given amount ($10.00) shall be allowed for procuring the money from the Government for war veterans. * * *

On the specific point that the Federal Statute applies only to the original claim and not to action after the claim is established, which seems to be the view of the Superior Court, the case of *United States* v. *Reynolds*, 48 Fed. 721, is directly in point. In that case the pensioner had been duly admitted to the rolls, but being ignorant and unable to prepare the then necessary voucher, he procured an attorney to fill out the vouchers and forward them to the pension agent. When the check arrived, the attorney

retained out of the proceeds thereof a fee of $10.00, for which action he was indicted. The defense, in part, was that defendant was not "a person instrumental in prosecuting a claim for pension." On this point the court said (page 722):

> * * * The pensioners deserve and receive at the hands of the government the most careful and tender consideration. Many of them are helpless; often they are ignorant, and exposed to extortion. For this reason congress has enacted laws for protecting them from the rapacity of their agents, not only in the steps necessary for the establishment of their right to be upon the pension rolls, but also in every proceeding which must be taken in order to obtain the installments of their pension. The defendant was instrumental in prosecuting the claim of Danner, within the terms of the section. * * *.

Upon a casual reading of the three cases mentioned below, one might believe they hold contrary to the above-stated views, but a close analysis will show they do not. Two are by United States District Courts and one by the Supreme Court of Rhode Island.

In *United States* v. *Nicewonger* (20 Fed. 438) the District Court, Western District of Pennsylvania, held that the Federal Statute did not apply to a claim for reimbursement for expenses of last illness out of accrued pensions.

In *United States* v. *Brown* (40 Fed. 457) the District Court, Eastern District of South Carolina, held that

the statute did not apply to voluntary donations by the pensioner, but would apply to any solicitation.

In *Southwick* v. *Evans*, 21 Atl. 104, the Supreme Court of Rhode Island said:

> The court after examining several items of the account continued: Allowing "to E. D. McGuinness, in matters relating to the guardianship, and excluding services in procuring the pension, $50", and adding: "In regard to charges for services performed, and expenses incurred, about the pension, we have allowed the guardian compensation for such work and expenses as the pensioner himself would ordinarily have done and incurred, independent of his attorney, if he had been of capacity, being of the opinion that such allowances are not to be regarded as the services of an attorney, agent, or other person in procuring a pension, within the meaning of the United States pension laws, but rather as preparations for the prosecution of the claim."

It is obvious that the first two are not in point. The third case differentiates between the compensation and expenses which may be allowed a guardian for work which the veteran himself, if sui juris, would do, and that which might be done by an attorney. This case (if correct) does not sustain the decision of the Superior Court on any point.

The authorities cited and relied on by petitioner, and others omitted in the interest of brevity, clearly demonstrate that the courts below erred in holding that the Federal Statutes and Regulations pursuant

thereto do not effectually limit the amount of the fee payable.

Not only was the fee illegal as to amount but also as to the method of payment. The same Federal Statutes and Regulations limiting the amount, prescribe an exclusive mode or manner of allowance and payment of such fees as may properly be paid.

The statutory history need not be repeated here. No judicial decision bearing directly on this exact point has been found, except the ruling of the District Court of the United States for the Northern District of Iowa in the case of *U. S.* v. *Van Leuven*, reported in 62 Fed. 52. In overruling defendant's demurrer to an indictment for violating the Act of July 4, 1884 (which is the Act applicable to the instant case), that Court said (at pages 54 and 55):

> * * * Thus an agent, attorney, or other person rendering services in aid of the procurement of a pension, or the increase thereof, may be guilty of a misdemeanor by directly or indirectly contracting for, demanding, receiving, or retaining a compensation in excess of the legal amount, or he may be guilty of a misdemeanor by contracting for, demanding, or receiving his compensation before the allowance of the pension, or in a manner other than that provided in the statute.
>
> * * * * *
>
> * * * The protection of the statute is thrown about all applicants for pensions, even though they may fail in proving that they had been in the military or naval service, within

> the meaning of the pension laws. The sections of the statute restricting the fees legally demandable by agents or attorneys have a double purpose—the one being the protection of the applicant; the other, the protection of the government against fraudulent claims, which might be greatly multiplied if no restrictions in regard to the amount or time of payment of fees were provided. It would greatly narrow the real purpose of the statute if we should read into the same the restriction that its provisions are applicable only in cases wherein a soldier or sailor who had actually been in service was the applicant. Whenever an agent or attorney undertakes to render service in aid of an application for a pension, or for an increase thereof, he then comes within the purview of the statute, and must act within its provisions. * * *

This Court cited the *Van Leuven case* in its opinion in the case of *Calhoun* v. *Massie*, 253 U. S., at page 173, 64 Law Ed. at page 845. The correctness of petitioner's position here apparently was assumed by the Supreme Court of Massachusetts in the case of *Wolcott* v. *Frissell* (1883), 134 Mass. 1, 45 Amer. Rep. 272. The decision therein was that the amount was properly limited by the court below to that prescribed by the Federal Statute.

Adverse counsel may possibly cite the opinion of the Massachusetts Court in *Caverly* v. *Robbins*, 149 Mass. 16, 20 N. E. 450, 2 L. R. A. 745, as contrary to the point just indicated in that there was a judgment for $10.25 for the plaintiff in that case who

sued pensioner for $162.00 alleged to be the reasonable value of his professional services in obtaining the pension for defendant. But that case is not in fact contrary to petitioner's position. The defendant did not appeal and there was nothing before the court except the plaintiff's exceptions to the judgment, which limited recovery to $10.25. It is also probable that that case was controlled by the Act of June 20, 1878, *supra*. The earlier case of *Wolcott* v. *Frissell*, *supra*, was cited in support of the court's conclusion that the plaintiff's exceptions to the trial court's judgment should be overruled.

The same observations may be made as to the Michigan case of *Hall* v. *Kimmer* (1886), 61 Mich. 269, 28 N. W. 96, where the review was invoked by the attorney only, who complained of an allowance of the limited amount prescribed by the Federal Statute. There are other cases, such as *Ladd* v. *Boston*, 64 N. H. 613, which fall in the same category.

Apparently, these cases were all based upon the law in effect prior to the Act of July 4, 1884, 23 Stat., 98, 38 U. S. C. 111–116. Said Act, in Section 1 thereof, contained a proviso saving the rights under contracts entered into under the Act of 1878, *supra*, *U. S.* v. *Van Vliet*, 22 Fed. 641. The 1884 Act, 23 Stat., 98, in the following quoted paragraph, contained new language (below, in italics) which constituted the basis of the practice since that date and the Regulations of the Pension Bureau and its successor, the Veterans' Administration.

> Any agent or attorney or other person instrumental in prosecuting any claim for pension or bounty land, who shall directly or indirectly contract for, demand or receive or retain any *greater compensation* for his services or instrumentality in prosecuting a claim for pension or bounty land than is herein provided, *or for payment thereof* at any other time *or in any other manner than is herein provided*, or who shall wrongfully withhold from a pensioner or claimant the whole or any part of the pension or claim allowed and due such pensioner or claimant, or the land warrant issued to any such claimant, shall be deemed guilty of a misdemeanor, * * *. [Italics ours.] (23 Stat., at page 101. This paragraph is now divided between 38 U. S. C., 112 and 43 U. S. C. 844.)

However, the construction now asserted by petitioner as proper has the sanction of administrative approval over a long period of years, and apparently has not been questioned in any Appellate Court heretofore except as above mentioned in *Phillips* v. *Ballinger*, 37 App. D. C. 46.

In the decision of the Secretary of the Interior in the case of George D. Hilton, June 17, 1896, in Volume 8, Decisions of the Department of the Interior, at page 183 (discussing the Act of 1884), it is said:

> In this connection I remark that by operation of amended section 4785, Revised Statutes, every payment, in compensation for services in prosecuting a claim for pension or bounty land must find its authority in the direction of

> the Commissioner of Pensions. Nor is the statute simply directory in its terms, for it expressly prohibits the demand or receipt of any other compensation than such as the Commissioner of Pensions shall direct to be paid to him, not exceeding $25.
>
> This law is, therefore, mandatory in its terms, and its application is expressly made to rest in the discretion of the Commissioner of Pensions. Yet this is not an arbitrary discretion, but a discretion founded in law, reason, and justice. The Commissioner has power to allow fees, in suitable cases, not exceeding $25.

and again on page 185 it is said:

> From the very nature of the statute regulating the allowance and payment of fees, it is evident that the attorney has had no legal right to collect directly from the pensioner since the enactment of the law of July 4, 1884, whereby the act of June 20, 1878, was repealed.

The statutory language there considered is in substance the same as is here involved.

Mr. Justice Van Devanter, then Assistant Attorney General, had occasion to consider the same statute in an opinion rendered the Secretary of the Interior in 1899 in the case of Margaret E. Davis (Volume X, page 403, Decisions of the Department of the Interior). In the course of an opinion concluding that a claim by the wife of a pensioner for "divided pension" under the Act of March 3, 1899, was not a "claim for pension" within the terms of the Act of 1884, he nevertheless recognized the construction now

urged by petitioner. After referring to certain statutory provisions, this language occurs in said opinion at page 408:

> When the pension is allowed, the fee for the prosecution of the claim, if conducted by an agent, attorney, or other person employed by the claimant for that purpose, is earned, but it can be paid only upon the direction of the Commissioner of Pensions, and then only out of the pension money. * * *

The fee being illegal, the contract therefor was invalid, and the court could not enforce same. It is well settled law, as stated by the Supreme Court of Pennsylvania in *Waychoff* v. *Waychoff*, 163 Atl., 670, that a contract which is illegal or against public policy will not be enforced. See also *Oscanyan* v. *Winchester Repeating Arms Co.*, 103 U. S. 261. In that case this court quoted with approval the following language from the decision in the case of *Hall* v. *Coppell*, 7th Wall., 542:

> The principle to be extracted from all the cases is, that the law will not lend its support to a claim founded upon its violation.

SUMMARY

It will be seen therefore that—

A. The United States has the power to limit fees which may be charged by attorneys for services in presenting pension claims.

B. The United States has by Statute, and Regulations issued pursuant thereto, limited the fees which may be charged for such service.

C. The limitations apply in this case, and any contract contrary thereto is illegal.

D. The payment of a fee may be made only in the manner or mode prescribed by Regulations, viz: directly to the attorney by the Veterans' Administration upon approval by the latter.

E. The Superior Court in deciding this case to the contrary erred.

F. In so deciding the court deprived the petitioner, and the insane veteran on whose behalf he appeared, of a right, privilege, or immunity granted by Federal Law.

CONCLUSION

It is respectfully submitted that for the reasons stated the judgment of the Superior Court should be reversed, with instructions that the petition for the fee be denied with costs against the attorney or the guardian individually and not out of the estate of the insane pensioner.

JAMES T. BRADY,
Solicitor,
EDWARD E. ODOM,
Assistant Solicitor,
Y. D. MATHES,
Assistant Solicitor,
Veterans' Administration, Washington, D. C.
VINCENT A. BALDAUF,
Chief Attorney,
Veterans' Administration, Pittsburgh, Pennsylvania.

APPENDIX

SECTION 2, PUBLIC 536, 71ST CONGRESS, 46 STAT. 1016, 38 U. S. C. 11–A

There shall be at the head of such Veterans' Administration an administrator to be known as the Administrator of Veterans' Affairs, who shall be appointed by the President, by and with the advice and consent of the Senate. Such administrator shall receive a salary of $12,000 a year, payable monthly. Upon the establishment of such Veterans' Administration all the functions, powers, and duties now conferred by law upon the Commissioner of Pensions, the Board of Managers of the National Home for Disabled Volunteer Soldiers, and the Director of the United States Veterans' Bureau are hereby conferred upon and vested in the Administrator of Veterans' Affairs. Such administrator, under the direction of the President, shall have the control, direction, and management of the various agencies and activities enumerated in and referred to in section 1 of this Act, and shall be charged with all the administrative duties relating to the National Home for Disabled Volunteer Soldiers and the Bureau of Pensions now imposed by law upon the Secretary of War and the Secretary of the Interior, respectively. All final decisions or orders of any division, bureau, or board in the Veterans' Administration shall be subject to review, on appeal, by such administrator.

SECTION 4, PUBLIC NO. 2, 73D CONGRESS, 48 STAT. 9, 38 U. S. C. 704

The President shall prescribe by regulation (subject to the provisions of section 1 (e) of this title) the date of the beginning and of the termination of the period in each war subsequent to the Civil War, including the Boxer Rebellion and the Philippine Insurrection, service within which shall for the purposes of this Act be deemed war-time service. The President shall further prescribe by regulation the required number of days of war or peace-time service for each class of veterans, the time limit on filing of claims for each class of veterans and their dependents, the nature and extent of proofs and presumptions for such different classes, and any other requirements as to entitlement as he shall deem equitable and just. The President in establishing conditions precedent may prescribe different requirements or conditions for the veterans of different wars and their dependents and may further subdivide the classes of persons as outlined in section 1 of this title and apply different requirements or conditions to such subdivisions.

SECTION 7, PUBLIC NO. 2, 73D CONGRESS, 48 STAT. 9, 38 U. S. C. 707

The Administrator of Veterans' Affairs subject to the general direction of the President and in accordance with regulations to be issued by the President shall administer, execute, and enforce the provisions of this title and for such purpose shall have the same authority and powers as are provided in sections 425, 430, 431, 432, 433, 434, 440, 442, 443, 444, 447, 450, 451, 453, 455, 457, 458, 459, 459a, 459c, 459d, 459e, 459f, title 38 U. S. C., and such other sections of

title 38 U. S. C., as relate to the administration of the laws granting pensions.

SECTION 111, TITLE 38, U. S. CODE, 23 STAT., 99

Compensation of agent or attorney. No agent or attorney or other person shall demand or receive any other compensation for his services in prosecuting a claim for pension than such as the Commissioner of Pensions shall direct to be paid to him, not exceeding $25; nor shall such agent, attorney, or other person demand or receive such compensation, in whole or in part, until such pension shall be allowed. In all claims allowed since June 20, 1878, where it shall appear to the satisfaction of the Commissioner of Pensions that the fee of $10, or any part thereof, has not been paid, he shall cause the same to be deducted from the pension, and pay the same to the recognized attorney.

SECTION 114, TITLE 38, U. S. CODE, 23 STAT. 99

Same; agreement for fee filed; fee in case of failure to file; form, amount paid deducted from fee. The agent or attorney of record in the prosecution of the case may cause to be filed with the Commissioner of Pensions, articles of agreement, without additional cost to the claimant, setting forth the fee agreed upon by the parties which agreement shall be executed in the presence of and certified by some officer competent to administer oaths. In all cases where application is made for pension, and no agreement is filed with the commissioner as herein provided, the fee shall be $10 and no more. And such articles of agreement as may be filed with the Commissioner of Pensions are not authorized, nor will they be recognized except in claims for original pensions, claims

for increase of pension on account of a new disability, in claims for restoration where a pensioner's name has been or may hereafter be dropped from the pension rolls on testimony taken by a special examiner, showing that the disability or cause of death, on account of which the pension was allowed, did not originate in the line of duty, and in cases of dependent relatives whose names have been or may hereafter be dropped from the rolls on like testimony, upon the ground of nondependence, and in such other cases of difficulty and trouble as the Commissioner of Pensions may see fit to recognize them. No greater fee than $2 shall be demanded, received, or allowed in any claim for pension granted by special act of Congress, nor in any claim for increase of pension on account of the increase of the disability for which the pension had been allowed. No fee shall be demanded, received, or allowed in any claim for arrears of pension or arrears of increase of pension allowed by any act of Congress passed subsequent to the date of the allowance of the original claims in which such arrears of pension, or of increase of pension, may be allowed. The articles of agreement herein provided for shall be in substance as follows, to wit: * * *

And if in the adjudication of any claim for pension in which such articles of agreement have been, or may be, filed, it shall appear that the claimant had, prior to the execution thereof, paid to the attorney any sum for his services in such claim, and the amount so paid is not stipulated therein, then every such claim shall be adjudicated in the same manner as though no articles of agreement had been filed, deducting from the fee of $10 allowed by law such sum as claimant shall show that he has paid to his said attorney. Any agent or attorney or other person

instrumental in prosecuting any claim for pension, who shall directly or indirectly contract for, demand or receive or retain any greater compensation for his services or instrumentality in prosecuting a claim for pension than is herein provided, or for payment thereof at any other time or in any other manner than is herein provided, or who shall wrongfully withhold from a pensioner or claimant the whole or any part of the pension or claim allowed and due such pensioner or claimant, or any agent, attorney, or other person instrumental in prosecuting any claim for increase of pension on account of the increase of disability for which pension was allowed, who shall directly or indirectly contract for, demand, receive, or retain any compensation for such services, except as hereinbefore provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall, for each and every such offense, be fined not exceeding $500 or imprisoned, not exceeding two years, or both, in the discretion of the court. (Articles of Agreement omitted.)

SECTION 115, TITLE 38, U. S. CODE, 23 STAT. 101

Same; commissioner may reject contract for fees. The commissioner shall have power, subject to review by the Secretary, to reject or refuse to recognize any contract for fees, provided for in section 114 of this title, whenever it shall be made to appear that any undue advantage has been taken of the claimant in respect to such contract.

SECTION 493, TITLE 5, U. S. CODE, 23 STAT. 101

Agents or attorneys representing claimants before department. The Secretary of the Interior may prescribe rules and regulations governing the recogni-

tion of agents, attorneys, or other persons representing claimants before his department, and may require of such persons, agents, and attorneys, before being recognized as representatives of claimants, that they shall show that they are of good moral character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their claims and such Secretary may, after notice and opportunity for a hearing, suspend or exclude from further practice before his department any such person, agent, or attorney shown to be incompetent, disreputable, or who refuses to comply with the said rules and regulations, or who shall with invent to defraud in any manner, deceive, mislead, or threaten any claimant, or prospective claimant, by word, circular, letter, or by advertisement.

ACT OF JUNE 20, 1878, CHAPTER 367, 20 STAT. 243, 43 U. S. CODE 842

It shall be unlawful for any attorney, agent or other person to demand or receive for his services in a pension case a greater sum than ten dollars. No fee contract shall hereafter be filed with the Commissioner of Pensions in any case. In pending cases in which a fee contract has heretofore been filed, if the pension shall be allowed, the Commissioner of Pensions shall approve the same as to the amount of the fee to be paid at the amount specified in the contract. Sections forty-seven hundred and sixty-eight, forty-seven hundred and sixty-nine, and forty-seven hundred and eighty-six of the Revised Statutes shall not apply to any case or claim hereafter filed, nor to any pending claim in which the claimant has not

been represented by an agent or attorney prior to the passage of this act.

SEC. 2. Section forty-seven hundred and eighty-five of the Revised Statutes is hereby repealed.

ACT OF FEBRUARY 27, 1877, CHAPTER 69, VOLUME 19, PAGE 252, SECTION 4768, REVISED STATUTES

The Commissioner of Pensions shall forward the certificate of (pensions) (pension), granted in any case, to the agent for paying pensions where such certificate is made payable, and at the same time forward therewith one of the articles of agreement filed in the case and approved by the Commissioner, setting forth the fee agreed upon between the claimant and the attorney or agent, and where no agreement is on file, as hereinbefore provided, he shall direct that a fee of ten dollars only be paid the agent or attorney.

ACT OF JULY 8, 1870, CHAPTER 225, SECTION 10, VOLUME 16, PAGE 193, SECTION 4769, REVISED STATUTES

It shall be the duty of the agent paying such pension to deduct from the amount due the pensioner the amount of fee so agreed upon or directed by the Commissioner to be paid where no agreement is filed and approved, and to forward or cause to be forwarded to the agent or attorney of record named in such agreement, or, in case there is no agreement, to the agent prosecuting the case, the amount of the proper fee, deducting therefrom the sum of thirty cents in payment of his services in forwarding the same.

ACT OF MARCH 3, 1873, CHAPTER 234, SECTION 31, VOLUME 17, PAGE 575, SECTION 4785, REVISED STATUTES

No agent or attorney or other person shall demand or receive any other compensation for his services in prosecuting a claim for pension or bounty land than such as the Commissioner of Pensions shall direct to be paid to him, not exceeding twenty-five dollars.

SECTION 500, WORLD WAR VETERANS' ACT, 1924, 43 STAT. 1311, 38 U. S. C. 551

Except in the event of legal proceedings under section 19 of Title 1 of this Act, no claim agent or attorney except the recognized representatives of the American Red Cross, the American Legion, the Disabled American Veterans, and Veterans of Foreign Wars, and such other organizations as shall be approved by the director shall be recognized in the presentation or adjudication of claims under Titles II, III, and IV of this Act, and payment to any attorney or agent for such assistance as may be required in the preparation and execution of the necessary papers in any application to the bureau shall not exceed $10 in any one case: *Provided, however,* That wherever a judgment or decree shall be rendered in an action brought pursuant to section 19 of Title I of this Act the court, as a part of its judgment or decree, shall determine and allow reasonable fees for the attorneys of the successful party or parties and apportion same if proper, said fees not to exceed 10 per centum of the amount recovered and to be paid by the bureau out of the payments to be made under the judgment or decree at a rate not exceeding one-tenth of each of such payments until paid. Any person who shall, directly or

indirectly, solicit, contract for, charge, or receive, or who shall attempt to solicit, contract for, charge or receive any fee or compensation, except as herein provided, shall be guilty of a misdemeanor, and for each and every offense shall be punishable by a fine of not more than $500 or by imprisonment at hard labor for not more than two years, or by both such fine and imprisonment.

PARAGRAPH XVI, VETERANS' REGULATION NO. 10

The Administrator of Veterans' Affairs is hereby authorized to recognize representatives of the American Red Cross, the American Legion, the Disabled American Veterans, the Grand Army of the Republic, the United Spanish War Veterans, Veterans of Foreign Wars, and such other organizations as he shall approve, in the presentation of claims. However, no such representative shall be recognized until a certificate has been filed in the Veterans' Administration, under such rules as the Administrator of Veterans' Affairs may prescribe, certifying that no fee or compensation of whatsoever nature shall be charged veterans or the dependents of veterans for service rendered. The rules prescribed by the Administrator of Veterans' Affairs shall contain a provision requiring in each claim the filing of a power of attorney in such manner and form as the Administrator of Veterans' Affairs may prescribe.

PARAGRAPH XVII, VETERANS' REGULATION NO. 10

The Administrator of Veterans' Affairs is hereby authorized, under such rules as he may prescribe, to recognize agents, attorneys, or other persons in the presentation of claims. The rules prescribed by the

Administrator of Veterans' Affairs may require of such persons, agents, and attorneys, before being recognized as representatives of claimants, that they shall show that they are of good moral character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their claims and the Administrator of Veterans' Affairs may, after notice and opportunity for a hearing, suspend or exclude from further practice before the Veterans' Administration any such person, agent, or attorney shown to be incompetent, disreputable, or who refuses to comply with the said rules and regulations, or who shall with intent to defraud, in any manner, deceive, mislead, or threaten any claimant, or prospective claimant, by word, circular, letter or by advertisement. The Administrator of Veterans' Affairs is further authorized to determine and pay fees in pension claims to such persons, agents and attorneys, and to prescribe rules governing entitlement to and the amount and mode of payment of such fees in accordance with sections 111, 114, and 115, Title 38, U. S. C.

VETERANS' REGULATION NO. 10, INSTRUCTION NO. 3–A

Subject: RECOGNITION OF PENSION ATTORNEYS AND PENSION CLAIM AGENTS.

For the purposes of Veterans' Regulation No. 10, Paragraph XVII, the following instructions with reference to recognition of Pension Attorneys and Pension Claim Agents in the presentation of claims are hereby issued:

The policy of the Veterans' Administration precludes the admittance to practice as a Pension Attor-

ney or a Pension Claim Agent any person who is an officer or employee, appointive or elective, of any veterans', welfare, or state or county, etc., organization engaged in assisting claimants in presenting claims before the Veterans' Administration without fee or emolument. Furthermore, it is contrary to the policy to permit an attorney or agent to transact pension claims business from or at an office from or at which a veterans' or welfare organization, or an agency of a state or other political subdivision, carries on its work incident to assisting claimants in presenting claims before the Veterans' Administration, or to use the stationery of such an organization or agency in transacting his pension claim business.

Applicants for admission to practice as attorneys will be presumed to have such knowledge of the law and Veterans Regulations governing as to qualify them to render substantial service, but applicants for admission to practice as agents shall be required to prove their fitness to render substantial service by undergoing a written examination testing their knowledge of the law and Veterans Regulations promulgated thereunder, as to which separate instructions will be issued.

A. ADMISSION TO PRACTICE

1. *Pension Attorneys.*—Any person who is an attorney at law in good standing and a citizen of the United States, or has declared his intention to become such a citizen, may be admitted to practice as a Pension Attorney, if not prohibited by law, and represent claimants before the Veterans' Administration, by presenting for that privilege his satisfactory application containing recitals as to the following facts (no particular form of application required):

(a) The applicant's full name, age, permanent post office address, and whether he is a citizen of the United States.

(b) The names and addresses of all courts before which he has been admitted to practice, giving the dates of such admissions. The names of all departments, bureaus and offices of the Government before which he has been admitted to practice, giving the dates of such admissions.

(c) Whether he has ever been disbarred, suspended, or excluded from practice; and if so, the name and location of the court, courts, or executive department by which his disbarment, suspension, or exclusion and readmission were ordered, giving the dates thereof and the grounds upon which he was disbarred, suspended, or excluded.

(d) Whether he has ever been a defendant in a criminal case in court. If so, state in what court or courts, all the circumstances and the result.

(e) Whether he is an officer or employee, elective or appointive, of any veteran or service organization, or an employee of any municipal, county, state or Federal institution, the duties of which are to aid and assist in the prosecution of claims for pension.

(f) The name of the office or employment, if any, which the applicant holds or has, under the Government of the United States, at the date of his application for admission, or has heretofore so held or had, if any, and the date and cause of his separation from such former office or employment.

(g) Each application for admission as a Pension Attorney must be accompanied by oath of allegiance, sworn to before some officer authorized to administer the oath, as follows:

"I, , do solemnly swear (or affirm) that I will support and defend the Con-

stitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God."

(h) There should also be furnished a duly executed and authenticated certificate from the clerk of a court wherein applicant has been admitted to practice stating that the applicant has been and is duly admitted to practice and in good standing in the court.

2. *Pension Claim Agents.*—Any competent person who is a citizen of the United States, or who has declared his intention to become such a citizen, and who is not an attorney at law, may be admitted to practice as a Pension Claim Agent, if not prohibited by law, and represent claimants before the Veterans' Administration by presenting his satisfactory application for that privilege containing recitals as to the following facts (no particular form of application required):

(a) The applicant's full name, age, permanent post office address, present occupation and for the preceding five years, and whether he is a citizen of the United States.

(b) Whether he has ever been admitted, disbarred, suspended, or excluded from practice before any executive department or bureau of the Federal Government; and if so, the name of such department or bureau and date thereof.

(c) Whether he has ever been a defendant in a criminal case in court—If so, state in what court or courts, all the circumstances and the result.

(d) Whether he is an officer or employee, elective or appointive, of any veteran or service organization,

or an employee of any municipal, county, state, or Federal institution, the duties of which are to aid and assist in the prosecution of claims for pension.

(e) The name of any office or employment, if any, which the applicant holds or has, under the Government of the United States, at the date of his application for admission, or has heretofore so held or had, if any, and the date and cause of his separation from such former service or employment.

(f) A brief statement of the applicant's educational qualifications.

(g) The names and post office addresses of five reputable persons who have an intimate knowledge of the applicant's character and qualifications.

(h) Each application for admission as a Pension Claim Agent must be accompanied by oath of allegiance, sworn to before some officer authorized to administer the oath, as follows:

> I, _____, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and I take this obligation freely without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

3. All applications for admission to practice should be addressed to and filed with the Administrator of Veterans' Affairs, Washington, D. C., who will, after such consideration and investigation as he may deem necessary, take action thereon.

B. SUSPENSION AND DISBARMENT

1. Whenever the Administrator of Veterans' Affairs has knowledge or information that a Pension Attorney or Pension Claim Agent admitted to practice before the Veterans' Administration is or has engaged in unlawful, unprofessional, or dishonest practice, or has been guilty of disreputable conduct, or is incompetent, or has refused to comply with the laws and regulations governing his practice before the Veterans' Administration, the Administrator shall give the accused attorney or agent due notice with a statement of the charge or charges against him, which statement shall be sufficiently specific to permit the accused intelligently to make answer thereto, and shall cite said attorney or agent to show cause within 30 days, which time limit may be extended by the Administrator, why he should not be suspended or disbarred from practice.

2. If said attorney or agent shall fail to file an answer or other pleading, within the time specified, such charge or charges will be taken as confessed and judgment may be rendered as upon default.

3. If an answer, under oath, is filed denying the charges, or so explaining them as to raise an issue thereon, a time and place shall then be set for the taking of testimony. The testimony shall be taken at as convenient a place as possible for both the Government and the defendant, and notice shall be served on the defendant informing him of the time and place at which testimony will be taken for the Government, in order that he may be present and cross-examine the witnesses. Testimony shall be reduced to writing and be signed by the witnesses, unless otherwise stipulated, and may be taken before any

officer authorized to administer oaths for general purposes or before any officer or agent of the Veterans' Administration designated for that purpose. After the testimony has been taken, it will be considered; and the Administrator will suspend or disbar such attorney or agent from practice before the Veterans' Administration or take such other action thereon as the facts warrant.

4. Any attorney or agent will be deemed disreputable in the sense in which that word is used in the foregoing paragraph, and be subject to suspension or exclusion from practice as such, who, after being admitted to practice, knowingly commits or is guilty of any of the following acts, to wit: (a) Presents or prosecutes fraudulent pension or other claims against the United States; (b) demands or accepts any unlawful compensation for presenting or prosecuting any claim before the Veterans' Administration or for advice or consultation concerning such a claim; (c) with intent to defraud has in any manner deceived, misled, or threatened any claimant or prospective claimant by word, circular, letter, or advertisement; (d) who, in the presentation or prosecution of, or in connection with, any matter or business pending before the said Veterans' Administration has as his associate, or employs as his agent, subagent, or correspondent, any person who has been guilty of any of the above mentioned acts, or who has been denied admission to practice, or is suspended or disbarred from practice before said Veterans' Administration, or who himself acts as the associate, agent, subagent, or correspondent of any such person; or who is otherwise and in any manner whatever guilty of dishonest or unprofessional conduct.

C. RULES OF PRACTICE

1. A person having been regularly admitted to practice as a Pension Attorney or Pension Claim Agent by the Administrator of Veterans' Affairs and appearing of record in the Veterans' Administration, may be recognized to prosecute any claim for pension in which the law or regulations do not prohibit the employment of an attorney or the payment of an attorney fee, on filing a power of attorney from the claimant: *Provided, however,* That the Administrator, in his discretion, may recognize such person without compensation in any claim for pension heretofore filed, or that may hereafter be filed, in which the law or regulations prohibit the payment of such fee: *And provided,* That where the power of attorney is in the name of a firm of agents or attorneys some duly qualified member thereof must enter an appearance therein on behalf of the firm.

2. Only a duly executed power of attorney confers upon an agent or attorney the right to present and prosecute a case before the Veterans' Administration. Upon receipt of a duly executed power of attorney, the agent or attorney named therein will be informed of the status of the claim, and will be recognized as the sole agent for the presentation and prosecution of the claim covered thereby so long as the power of attorney is effective.

3. A power of attorney, in order to be recognized as good and valid must be signed by the claimant or his guardian in the presence of two witnesses, neither of whom is the agent or attorney named therein, and be acknowledged before an officer duly authorized to administer oaths for general purposes. A notary public or other officer authorized to ad-

minister oaths for general purposes certifies or is presumed to certify in his certificate to a pension paper that he has no interest direct or indirect in the prosecution of the claim. Therefore, no paper in a pension claim can be executed before the attorney therein without forfeiting his attorneyship rights. The particular claim to which the power of attorney is intended to relate must be specified therein.

4. An agent or attorney shall be required to exercise due diligence in all cases in which he is recognized.

5. Upon the rejection of a claim for pension the agent or attorney of record and the claimant shall be notified of such rejection and the reason therefor.

6. The claimant shall have the privilege of exercising his right at any stage of the claim to revoke a power of attorney and discharge his agent upon a showing of cause deemed good and sufficient by the Administrator.

7. The wilful withholding of an application for pension or evidence by an agent or attorney for any cause shall render such agent or attorney liable to suspension or disbarment.

8. A change of guardian in any case during pendency of a claim for pension shall not affect the question of attorneyship and fee, but no fee shall be allowed to a guardian who prosecutes the claim of his ward or to a firm of attorneys of which the guardian is a member.

9. A transfer, assignment or substitution of attorney shall not be recognized and no agent or attorney shall have the right to make an assignment of any claim in which he has been recognized.

10. Every agent or attorney who shall, directly or indirectly, request of any Member of either House of

Congress, or of any United States Government official or representative (other than one whose duty it is under the law to supervise and administer the laws, rules and regulations governing the granting of pensions), or any organization recognized under Paragraph XVI of Veterans Regulation No. 10, aid or assistance in the prosecution of a pension claim, or who shall, directly or indirectly, request or advise claimant to seek such aid in the prosecution of a pension claim, shall be subject to inquiry respecting his competency to fully represent a claimant and shall be considered as having forfeited his right to any fee in such case.

11. Attorneys and agents shall not be furnished with supplies of Veterans' Administration forms but will be required to have them printed at their own expense and in strict accordance with the official forms prescribed by the Administration. An attorney or agent may insert a power of attorney in his form over claimant's signature in words about as follows: "I hereby appoint ..... as my attorney to prosecute this claim." The claimant's signature must be attested by two witnesses and fully comply with Rule 3—otherwise the power of attorney will be invalid. Every agent, attorney or other person recognized as entitled to practice before the Veterans' Administration, shall submit to the Administrator, in duplicate, copies of all proposed advertising matter, including forms and letter-heads, etc., intended to solicit business before the Veterans' Administration, and if the same be not disapproved by the Administrator, and the agent or attorney so notified within thirty days from the date of filing, the

same shall be held, prima facie, approved. The use by an agent or attorney of the characters "U. S.", or the words "United States", as a part of his title or of the title of his business shall not be permitted. Agents will not designate themselves as attorneys at any time except in a power of attorney.

12. When an agent, attorney or other person incurs any expense in the prosecution of a claim for pension, he must file a sworn itemized account of such expense with the Veterans' Administration and secure the approval thereof by the Chief Attorney if the claim is adjudicated in the field or the Solicitor if in Central Office before demanding or receiving reimbursement from the claimant or pensioner.

13. Attorneys or agents shall not contract for, demand or receive, directly or indirectly, any compensation whatsoever for advice or consultation concerning the pension laws except such compensation as is herein provided, whether a claim has been or is thereafter filed, or no claim is filed, for the person in whose behalf such advice or consultation is had. Any agent or attorney who shall so do shall be regarded as incompetent to prosecute claims before the Veterans' Administration and shall thereby subject himself to suspension or disbarment to practice before the Veterans' Administration.

14. The fee provided in these instructions shall be due and payable only upon the approval of the claim by the Veterans' Administration and then only in the event the attorney or agent has rendered material service in the prosecution of the claim. The mere filing of an application for benefits shall not be deemed to be the rendering of material service in the prosecution of a claim.

15. At the time of allowance of the claim an award of the attorney's fee, if same is found due, will be made and paid by deduction from the pension allowed, but only to the attorney or agent of record at the time of allowance. The attorney to be entitled must have been admitted to practice before the Veterans' Administration and in good standing at the time of such payment.

16. No request of an agent or attorney for consideration of his title to a fee shall be entertained unless the same shall be filed in the Veterans' Administration within six months from the date of the award upon which such fee is claimed.

D. FEES

1. A fee not to exceed $10.00 in any original claim or $2.00 in any claim for increase may be allowed for the successful prosecution of such claim before the Veterans' Administration except where otherwise prohibited by law.

2. Any person who may collect or attempt to collect, either directly or indirectly, a fee contrary to the provisions of these instructions, shall be subject to the applicable penal provisions of the pension laws.

3. The presentation of a claim before a Special Review Board established under section 20, Public Act No. 78, 73d Congress, or to the Board of Veterans' Appeals seeking to maintain a claim which had been allowed under previously existing laws and which had been denied under Public Act No. 2, 73d Congress, will, for purposes of fee, be considered as an original claim.

4. When a claim has been established under Public Act No. 2 or any prior or subsequent legislation and then for any reason rights thereunder are held ter-

minated or claimant has been cited to show cause why they should not be terminated, claim for maintenance of such original claim will, for purposes of fee, be considered as an original claim.

5. A fee not to exceed $10.00 may be allowed for the successful prosecution of an application for excess pension or apportionment and a similar fee may be allowed for the successful defense of an application for apportionment. No fee will be allowed under this provision unless material assistance has been rendered.

E. REQUIREMENTS APPLY TO PRACTICE IN THE PROSECUTION OF OTHER THAN PENSION CLAIMS

1. The requirements relating to recognition of Pension Attorneys and Pension Agents to practice before the Administration as contained in these instructions shall apply in equal force to any attorney or agent seeking to represent a claimant in a claim for benefits of Emergency Officers' Retirement pay or Civil Service Retirement pay except that the schedule of fees as provided for in Paragraph D (1) pursuant to Veterans Regulation No. 10 applies only in pension claims. Care will be exercised in all matters respecting any fee and any effort to obtain or the acceptance of any exorbitant or inequitable fee will subject an attorney or agent to suspension or disbarment and any penalty otherwise imposed by law.

F. RECOGNITION OF GRATUITOUS SERVICES OF A RELATIVE OR FRIEND OF CLAIMANT

1. Nothing contained in these instructions shall be construed as prohibiting recognition of a relative or friend of the claimant who gratuitously and at the

written request of the claimant represents the latter in any case wherein the official of the Administration handling the claim is satisfied as to the bona fide status of the relative or friend as such.

G. BANKS OR TRUST COMPANIES ACTING AS GUARDIANS FOR VETERANS MAY BE REPRESENTED BEFORE SPECIAL REVIEW BOARDS:

1. Banks or trust companies, corporate entities, acting as guardians for veterans may be represented before special review boards as authorized representatives of veterans by any officer or employee thereof including a regularly employed attorney if such employee or attorney represents the corporation in its fiduciary capacity but no fee may be allowed for such services under Rule 8 hereof.

H. Veterans Regulation No. 10, Instruction No. 3, and paragraphs 1, 2, and 7 of Veterans Regulation No. 10, Instruction No. 5, are hereby canceled.

FRANK T. HINES,
Administrator of Veterans' Affairs.

DECEMBER 7, 1933.

PARAGRAPH 2 OF SECTION 21, WORLD WAR VETERANS' ACT, AS AMENDED BY ACT OF JULY 2, 1926, 44 STAT. 792

Whenever it appears that any guardian, curator, conservator, or other person is not in the opinion of the director properly executing the duties of his trust or has collected or is attempting to collect fees, commissions, or allowances that are inequitable or are in excess of those allowed by law for the duties performed or expenses incurred, or has failed to make such payments as may be necessary for the benefit of

the ward or the dependents of the ward, then and in that event the director is hereby empowered by his duly authorized attorney to appear in the court which has appointed such fiduciary and make proper presentation of such matters to the court: *Provided*, That the director in his discretion may suspend payments to any such guardian, curator, conservator, or other person who shall neglect or refuse, after reasonable notice, to render an account to the director from time to time showing the application of such payments for the benefit of such minor or incompetent beneficiary.

Authority is hereby granted for the payment of any court or other expenses incident to any investigation or court proceeding for the appointment or removal of any guardian, curator, conservator, or other person legally vested with the care of the claimant or his estate, or in connection with the administration of such estates by such fiduciaries, when such payment is authorized by the director.

PARAGRAPH 2 OF SECTION 21, WORLD WAR VETERANS' ACT, AS AMENDED BY PUBLIC NO. 262, 74TH CONGRESS, 49 STAT. ——

Whenever it appears that any guardian, curator, conservator, or other person, in the opinion of the Administrator, is not properly executing or has not properly executed the duties of his trust or has collected or paid, or is attempting to collect or pay, fees, commissions, or allowances that are inequitable or in excess of those allowed by law for the duties performed or expenses incurred, or has failed to make such payments as may be necessary for the benefit of the ward or the dependents of the ward, then and in that event the Administrator is hereby empowered

by his duly authorized attorney to appear in the court which has appointed such fiduciary, or in any court having original, concurrent, or appellate jurisdiction over said cause, and make proper presentation of such matters: *Provided*, That the Administrator, in his discretion, may suspend payments to any such guardian, curator, conservator, or other person who shall neglect or refuse, after reasonable notice, to render an account to the Administrator from time to time showing the application of such payments for the benefit of such incompetent or minor beneficiary, or who shall neglect or refuse to administer the estate according to law: *Provided further*, That the Administrator is hereby authorized and empowered to appear or intervene by his duly authorized attorney in any court as an interested party in any litigation instituted by himself or otherwise, directly affecting money paid to such fiduciary under this section.

Authority is hereby granted for the payment of any court or other expenses incident to any investigation or court proceeding for the appointment of any guardian, curator, conservator, or other person legally vested with the care of the claimant or his estate or the removal of such fiduciary and appointment of another, and of expenses in connection with the administration of such estates by such fiduciaries, or in connection with any other court proceeding hereby authorized, when such payment is authorized by the Administrator.

SECTION 788, TITLE 20, PURDON'S PENNSYLVANIA STATUTES (PENNSYLVANIA LAWS 647, SECTION 1, APRIL 24, 1929)

In any action brought under any law of this Commonwealth for the appointment of a committee or

guardian for a veteran of any war, or a minor child, or incompetent dependent of a veteran of any war, on whose account benefits of compensation or insurance or other gratuity is payable by the United States Veterans' Bureau, or its successor, or upon the filing of any petition or account by any such committee or guardian of any such person, notice of such action, or of the filing of such petition or account, and of the hearing thereon, shall be mailed the attorney of the United States Veterans' Bureau office having jurisdiction over such person. In all such cases, the United States Veterans' Bureau, or its successor, shall be a party in interest, and a certified copy of each account filed in the court shall be supplied the said bureau by the committee or guardian.

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